ant maliciously instituted and prosecuted interference proceedings in the patent office, thereby delaying the issuance of a patent to the complainant, the prior applicant. *Held*, that the complainant has no right of action for damages. *Avery & Son* v. *Case Plow Works*, 163 Fed. Rep. 842 (Circ. Ct., E. D. Wis., July, 1908).

In most jurisdictions of the United States an action for the malicious prosecution of a civil action will lie irrespective of arrest, attachment, or special damage. *Closson* v. *Staples*, 42 Vt. 209. *Contra*, *Smith* v. *Michigan Buggy Co.*, 175 Ill. 619. It is universally agreed, however, that the action will lie when there has been special damage other than that involved in defending the suit. See *Smith* v. *Michigan Buggy Co.*, *supra*. As it does not clearly appear that the plaintiff in the principal case alleged that he had been sued without probable cause, the decision may be supported. But assuming such an averment, the plaintiff according to the Vermont decision should have prevailed. And, it is submitted, the same result should follow even under the Illinois rule. For under the patent statutes an unpatented invention vests in the discoverer an inchoate right to its exclusive use. *Evans* v. *Weiss*, 2 Wash. (U. S.) 342. This is a property right which may be sold or assigned. *Burton* v. *Burton Stock Car Co.*, 171 Mass. 437. And the inventor is entitled to perfect the right by patent. *Gayler* v. *Wilder*, 10 How. (U. S.) 477. Therefore the defendant, by delaying the perfection of the plaintiff's right, must necessarily have caused special damage which should entitle the plaintiff to recover.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — SALE BY MORTGAGOR: RELEASE OF PART OF MORTGAGED PREMISES. — A bought part of a mortgaged tract of land. The rest of the land was then sold to B. The mortgagee, without knowledge of the sale to A, released from the mortgage lien the part sold to B. The value of B's land was equal to the amount of the mortgage. A filed a bill in equity praying that his land be released from the mortgage lien. *Held*, that he is not entitled to such relief. *Schofield* v. *Wallace*, 39 Pittsb. Leg. J. 41 (C. P., Allegheny Co., Pa., Aug. 1908).

As between purchasers of parts of mortgaged premises, their holdings are subjected to the satisfaction of the mortgage in the inverse order of their alienation. *Savings Bank* v. *Creswell*, 100 U. S. 630. It follows that if the mortgagee, with knowledge of previous alienations, releases from the mortgage lien portions subsequently alienated, which are of sufficient value to discharge the mortgage debt, those previously alienated are released from the mortgage lien. *Schrack* v. *Schriner*, 100 Pa. 451. But this rule of charging the lands in the inverse order of their alienation is a rule of equity, and as such should not be applied when it would cause hardship. It is not fair to put upon the mortgagee the duty of keeping himself informed of all conveyances of portions of the land and of the resulting equities claimed by the owners. But any alienee, who intends to claim an equity, should see to it that the mortgagee has notice of the alienation. *Stuyvesant* v. *Howe*, 1 Sandf. Ch. (N. Y.) 419. The plaintiff in the present case not having given such notice was rightly denied equitable relief.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATIONS — REQUIREMENT OF BANK DEPOSITORS' GUARANTY FUND. — A statute, passed after the incorporation of the plaintiff, provided that every state bank should pay an annual assessment equal to 1 % of its deposits for the purpose of creating a common guaranty fund for depositors. *Held*, that the statute is constitutional. *Noble State Bank* v. *Haskell*, 97 Pac. 590 (Okla.).

The statute does not impair the obligation of contracts, for before incorporating the bank the legislature had reserved the right to alter all corporate charters. Wilson, Rev. & Ann. St. Okla., 1903, c. 18, § 3; Okla. Const., Art. IX. § 47. See *Railroad Co.* v. *Maine*, 96 U. S. 499. Even without such reservation, a reasonable exercise of the police power does not come within the inhibition against impairing the obligation of contracts or conflict with other constitutional provisions. *Cummings* v. *Spaunhorst*, 5 Mo. App. 21. The nature of banking makes it especially a subject for regulation by the police power. Thus,

a state may constitutionally restrain unsound banks from doing business, or may require a deposit of securities for the safety of note holders or depositors. *Commonwealth* v. *Farmers & Mechanics Bank*, 21 Pick. (Mass). 542; *Medill* v. *Collier*, 16 Oh. St. 599. The Oklahoma statute, however, merges the required deposit into a common fund for the security of depositors in any insolvent bank; so it may be objected that a bank which remains solvent is unjustly deprived of property. The answer is that both strong and weak banks may become insolvent, and all insolvent banks will receive equal treatment in respect to the common fund. See *State* v. *Richcreek*, 167 Ind. 217. The constitutionality of early statutes requiring a common guaranty fund seems to have been accepted without question. See *Elwood* v. *Vermont*, 23 Vt. 701.

PROFITS À PRENDRE — PROFIT APPURTENANT CLAIMED WITHOUT STINT. — In defense to an action of trespass on a non-tidal stream belonging to the plaintiff, the defendant claimed a right from time immemorial, vested in the tenants of a certain manor, to fish on the property without stint and for commercial purposes. *Held*, that the court will not presume a grant of such a right. *Lord Chesterfield* v. *Harris*, [1908] 2 Ch. 397.

A profit *à prendre* may be appurtenant to land. *Huntington* v. *Asher*, 96 N. Y. 604. Or it may be held in gross, so as to be assignable. *Welcome* v. *Upton*, 6 M. & W. 536. And, so it would seem, may a use without stint. See *Bailey* v. *Stevens*, 12 C. B. (N. S.) 91. But it is doubtful whether an easement in gross may be required. *Mayor, etc., of New York* v. *Law*, 125 N. Y. 380. *Contra*, *Rangeley* v. *Midland Railway Co.*, L. R. 3 Ch. 306. It follows that an easement not connected with the use of the dominant tenement cannot pass with that tenement. *Ackroyd* v. *Smith*, 10 C. B. 164. Such an easement would be an anomaly; for it would be in effect personal and yet treated as appurtenant to land. This same reasoning, applied to the present case, shows the ground for refusing to uphold a use claimed as appurtenant which is without stint and therefore unlimited by the dominant estate. Even though an easement may be held in gross it must be claimed as in a man and his ancestors, not as annexed to land. For if a right is claimed as annexed to land it must be measured by the size and want of the estate to which it is appurtenant. See 2 Bl. Com. 265.

PUBLIC OFFICERS — RESIGNATION — WITHDRAWAL OF RESIGNATION. — A sheriff tendered his resignation to the board of county commissioners to take effect at a designated future day. The commissioners accepted it. *Held*, that the sheriff may, nevertheless, withdraw the resignation before the day appointed. *Ryan* v. *Murphy*, 97 Pac. 391 (Nev.).

For a discussion of the principles involved, see 19 HARV. L. REV. 304.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — AMERICAN TOBACCO COMPANY'S CASE. — The defendants were engaged in buying raw material, manufacturing, and selling the product beyond their state lines. Each owned many factories outright and controlled many through stock ownership, and they were together under affiliated managements. *Held*, that each defendant is a combination in restraint of trade under § 1 of the Sherman Act. *U. S.* v. *American Tobacco Co.*, 40 N. Y. L. J. 691 (C. C. A., S. D. N. Y., Nov. 7, 1908). See NOTES, p. 216.

RIGHT OF PRIVACY — CONSTITUTIONALITY OF STATUTE FORBIDDING UNAUTHORIZED USE OF NAME OR PORTRAIT FOR ADVERTISING PURPOSES. — A statute gave to a person whose name or portrait was used by another for advertising or trade purposes, without written consent, an equitable action to restrain such use, authorized an award of exemplary damages against the defendant if he shall have knowingly used the name or portrait in the manner declared unlawful by the act; and made such use of another's name or portrait a misdemeanor. *Held*, that the statute is not unconstitutional. *Rhodes* v. *The Sperry & Hutchinson Co.*, 40 N. Y. L. J. 494 (N. Y., Ct. App., Oct. 23, 1908).

This statute was directly aimed at a much criticized decision of the New York court which denied any remedy in such cases. *Roberson* v. *Rochester, etc., Co.*,